Filed 12/9/03 P. v. Quinones CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JOSE QUINONES, Defendant and Appellant.	B162131 (Los Angeles County Super. Ct. No. LA040812)

APPEAL from a judgment of the Superior Court of Los Angeles County, Debre K. Weintraub, Judge. Affirmed.

Jonathan B. Steiner and William Spater, under appointments by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and G. Tracey Letteau, Deputy Attorneys General, for Plaintiff and Respondent.

Jose Quinones appeals from judgment entered following a jury trial in which he was convicted of the unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)), possession of a controlled substance (Health & Saf. Code, § 11137, subd. (a)), possession of a smoking device, a misdemeanor (Health & Saf. Code, § 11364) and his admission that he suffered a prior felony conviction within the meaning of the "Three Strikes" law (Pen. Code, §§ 1170.12, subds. (a) through (d) and 667, subds. (b) through (i)). Sentenced to prison for five years and four months, he contends his rights to due process and equal protection were violated when he was presented to the jury in "jail blues." Additionally he contends he was denied effective assistance of counsel. For reasons explained in this opinion, we affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

As appellant does not dispute the sufficiency of evidence, it will suffice to observe that on March 25, 2002, he was arrested driving a stolen vehicle. Inside the vehicle, police found a baggie containing 3.28 grams of methamphetamine and a cylindrical glass pipe with white residue, that appeared to have been used to smoke methamphetamine.

I.
JAIL CLOTHING

Just prior to jury selection and before potential jurors entered the courtroom, the court noted appellant was wearing "jail blues." Defense counsel responded that he had just gone through the public defender clothing locker and picked out clothes that appeared to be clean and that would fit. Counsel had given the clothing to the bailiff, but the bailiff indicated that appellant would not wear them. Defense

counsel stated, therefore, he had no objection to appellant appearing in jail garb for trial.

When the court asked appellant if he wanted to go forward with trial in his jail clothing, appellant responded he did not know he was going to trial and did not know what was "going on." He asserted his attorney did not tell him "what's going on" and that he had asked for a new attorney. When the court inquired whether a *Marsden*[1] hearing had been held after appellant had made these claims, defense counsel acknowledged that such a hearing had been held.

After repeating that he did not know trial was to commence that day, appellant requested that he be allowed to call his family so they could bring him his own clothes, clothes that would fit him. The court offered to let appellant try the clothes on that had been provided and suggested appellant wear them when they started selecting the jury. The court also suggested that if his family brought appropriate clothes, appellant could wear them later. Appellant again stated he wanted his family to bring him his own clothes. In response to the repeated assertion that defense counsel had not communicated to appellant that this day was the day trial was to commence, defense counsel stated he had told appellant that morning that they were going to trial that day. He represented further that on "day 58 of 60" defense counsel told appellant that they "were going over to today and today would be the last day for trial in his case. [¶] [Counsel stated,] Today I told him that it was the last day. The People were having trouble with one of their counts, and they offered him an incredible opportunity to have a court trial in front of Judge Hoff, which I told him I thought would be fairer to him than a jury and

---

[1] *People v. Marsden* (1970) 2 Cal.3d 118, 126.

that this was the day for trial. So how he's confused about today's the day for trial is beyond me."

The court gave appellant the opportunity to try on the clothes and wear them and appellant declined, again stating they would not fit him. Defense counsel and the court offered to see if there were other clothes that might fit better. Following a recess, the court noted that appellant had an opportunity to try on the pair of clothes and an additional, larger pair, and appellant was still in his jail garb. Defense counsel represented to the court that appellant "decline[d] to wear civilian clothes. I don't know why. He won't even try them on." Appellant again repeated he "decline[d defense counsel] as my attorney. I don't want you to be my attorney." Thereafter, the court conducted a *Marsden* hearing.

Contrary to appellant's claim he was not denied constitutional rights when he was presented to the jury in jail clothing.

It is undisputed that consistent with the Fourteenth Amendment, he cannot be compelled "'to stand trial before a jury while dressed in identifiable prison clothes . . . .' [Citation.]" (*People v. Taylor* (1982) 31 Cal.3d 488, 494.) "Although the right to be tried in civilian clothing is a constitutional right valuable to a fair trial, the right may be waived by a failure to timely object or otherwise bring the matter to the court's attention. [Citations.] There are two reasons for this limitation. First, the potential harm is of a type that may be avoided if the matter is brought to the court's attention. A timely objection allows the court to remedy the situation before any prejudice accrues. [Citation.] In addition, there may be instances where for tactical reasons the defendant may wish to be tried in jail garb. [Citations.] Recognizing that the defendant is entitled to be tried in ordinary clothing, an attorney may nevertheless decide, based on the peculiar circumstances of an individual case, not to exercise that right. In such a rare case, courts should be reluctant to interfere with that decision because an attorney may waive his client's rights as to matters involving trial tactics. [Citation.]" (*Id.* at pp. 495-496.)

In the present case, appellant was not compelled to stand trial in prison clothing. Rather, he made that choice. While appellant claims he objected to the "ill fitting, arguably dirty clothes" supplied to him, the record reflects appellant refused to try on the clothes to determine if in fact they fit and thus failed to establish they were "ill fitting." Additionally, defense counsel represented to the court that the clothes appeared to be clean. Unlike the situation in *People v. Hetrick* (1981) 125 Cal.App.3d 849, 852, appellant here was offered two different choices of clothing, apart from his jail clothing, and refused to do anything to establish the clothes would not fit or would not be suitable. Based on this record, we cannot conclude he was given only the choice of wearing ill-fitting and dirty clothes or jail clothing. To the contrary, he chose to stand trial before a jury in jail clothing rather than wearing the suitable civilian clothing provided him. (Cf. *Felts v. Estelle* (9th Cir. 1989) 875 F.2d 785, 786-787.)

II.

Appellant claims the court's failure to grant his *Marsden* motion violated his right to effective assistance of counsel.

At the *Marsden* hearing, when the court asked appellant why he wanted to remove his attorney and have another attorney appointed, appellant responded that counsel had "lied" to him. Counsel never told him trial was going to start that day and they were going to pick a jury that day. Appellant also stated his counsel never told him anything. Counsel "just sends me into court and comes back in two weeks. I've been arrested for almost six months already, so I don't know what's going on."

Defense counsel responded he had been an attorney since 1979, a public defender for approximately 12 to 13 years and handled hundreds of cases at all levels of difficulty. He stated to the court he had previously had a motion pursuant to Penal Code section 995 granted and the present case was refiled. Additionally,

he was representing appellant in other proceedings, and they had been discussing strategy and received an offer from the prosecution, which appellant refused. Counsel stated he had talked to appellant about the case, that it was not their "first time around. This is a refile" and that counsel had another case on which he was working with appellant. When asked if he told appellant they were going to court "today," counsel stated that the "Court said we were going to trial today when the court put it over for last day for trial. I believe [appellant] was there in court, and then we would talk in back. And I explained to him about timing and how I was involved in another case. I may ask him to put it over, and he told me that he would not waive time on this particular case. [¶] So how we can have him saying he refuses to waive time, he wants to go to trial as soon as possible and then now as we get to the 60th day, suddenly he's not informed he's going to trial. I just—I don't quite understand how that is anything other than greatly inconsistent."

Appellant responded he had been in court Wednesday and had not spoken to his counsel. The court said, "'come back Friday[.]'" "Took me back. Now, here I am. [¶] Friday he comes and says, 'They're going to offer you a deal for a dope case.' Why am I going to take a deal for something I didn't do? [¶] The judge in superior dismissed the case. She told the D.A. he can't refile because it's not a legal matter anymore. It's a civil matter, but he still refiles and puts other charges on me that I didn't go register, which I have been registering, and there's proof that I've been registering, but he's not helping me. So I want another—I want another lawyer that's going to help me."

When the court inquired of defense counsel whether the statements made at the *Marsden* hearing would affect counsel's ability to represent appellant, counsel indicated they would not. Counsel acknowledged he and appellant did not have what he would consider to be "good communication" since appellant "has trouble hearing [counsel] for some strange reason." Counsel stated he speaks "very

simply" and has always told him an interpreter was available if appellant wanted one. Appellant responded, "I just want another lawyer that's going to help me."

Thereafter, the court determined defense counsel was properly representing appellant and while there appeared to be some personality issues between appellant and counsel, they did not constitute "a breakdown in the relationship or that any other attorney would be able to be better than defense counsel."

"A defendant is entitled to have appointed counsel discharged upon a showing that counsel is not providing adequate representation or that counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. [Citations.]" (*People v. Jones* (2003) 29 Cal.4th 1229, 1244-1245.)

"We review a trial court's decision declining to relieve appointed counsel under the deferential abuse of discretion standard. [Citations.]" (*People v. Jones*, *supra,* 29 Cal. 4th 1229, 1245.) Appellant stated his grounds for the motion were that counsel had lied to him, not told him they were going to trial that day and failed to inform appellant regarding the status of his case. Appellant claimed he had been in custody for six months and nothing had been happening with his case.

To the extent there was a credibility question between appellant and counsel at the hearing, the court was permitted to accept defense counsel's explanation. (*People v. Webster* (1991) 54 Cal.3d 411, 436; *People v. Smith* (1993) 6 Cal.4th 684, 696.) "If a defendant's claimed lack of trust in, or inability to get along with, an appointed attorney were sufficient to compel appointment of substitute counsel, defendants effectively would have a veto power over any appointment, and by a process of elimination could obtain appointment of their preferred attorneys, which is certainly not the law. [Citations.]" (*People v. Jones*, *supra,* 29 Cal. 4th 1229, 1246.)

The trial court acted well within its discretion in denying the *Marsden* motion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

VOGEL (C.S.), P.J.

We concur:

EPSTEIN, J.

HASTINGS, J.